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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,544	10/25/2003	Jennifer Hope Harris	Jenn002	2413
54279	7590	03/20/2006		
PAUL V. KELLER, LLC 4585 LIBERTY RD. SOUTH EUCLID, OH 44121			EXAMINER CASTELLANO, STEPHEN J	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 03/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SR

Office Action Summary	Application No. 10/694,544	Applicant(s) HARRIS, JENNIFER HOPE	
	Examiner Stephen J. Castellano	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 7,8,18,19,31,32,40 and 41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-17,20-30 and 33-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-41 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3-5-04</u> . | 6) <input type="checkbox"/> Other: ____. |

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-6, 9-17, 20-30 and 33-39, drawn to a trash receptacle, classified in class 220, subclass 62.
- II. Claims 7, 8, 18, 19, 31, 32, 40 and 41, drawn to a method of using, classified in class unknown, subclass unknown.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the trash receptacle can be used with no markings and no advertising thereon, that is, not using as an advertising specialty or as a marketing premium in a continuity promotion.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Paul Keller on March 14, 2006 a provisional election was made with traverse to prosecute the invention of the trash receptacle, claims 1-6, 9-17, 20-30 and 33-39. Affirmation of this election must be made by applicant in replying to this Office action. Claims 7, 8, 18, 19, 31, 32, 40 and 41 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9-11, 16, 17, 20-22 and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Hutcheson.

Hutcheson discloses a trash receptacle (container 1) comprising a body having side walls and a back, an opening 12 in the back below either one of the supports 9 and fittings (openings 12) in the side walls, a T shirt type plastic bag 30 is held in an open and up position by pulling a portion of the bag through the back opening and coupling the bag to the fittings as shown in Fig. 1.

Re claim 10, the front of the receptacle is partially open at openings 12.

Re the fittings hold the plastic bag no more than twelve or ten inches up limitations, the fittings hold the bag shown such that the bottom of the bag rest upon the floor of the receptacle as shown in Fig. 1 as hidden parts of the bag are shown in dotted lines. The bag resting on the floor is no more than zero inches up which is no more than twelve or ten inches up.

Claims 10-12, 14, 15, 17, 33-35 and 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Tobin.

Tobin discloses in Fig. 6 a trash receptacle comprising a body having walls and a front that is partially open, fittings (24, 25, 18a at slot in the bottom of the handle opening) formed in the body holding a plastic bag in an open position, wherein the fittings hold the bag no more than 12 inches up from the bottom of a supporting surface.

Re cardboard, see col. 3, line 58.

Re backboard, see col. 4, lines 6-13.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobin in view of Chich and Dickinson ('746).

Tobin discloses the invention except for the opening in the back as the slots 24 and 25 are at the edges where the back meets the side walls. Chich teaches a back with an elongated slot opening, the opening is elongated in a horizontal direction. Re claim 6, the opening spans nearly the width of the back insofar as applicant has shown this in her drawings. See Fig. 5 and 6 for the bag extending through the front opening. The back opening would be similarly configured. It would have been obvious to add the back opening to further attach the bag to eliminate sagging of the bag or spacing of the bag from the back panel.

It is believed that the slot in the handle openings 18a is a sufficient showing of side openings and that Chich sufficiently shows the back opening. If not, then Dickinson teaches slot openings at the top edge of each wall as shown in Fig. 4. It would have been obvious to add the slot openings taught by Dickinson to sufficiently secure a bag, to provide taut securement for different sized bags, and to provide varied locations of securement and different placement locations for a bag within a larger sized bag-holding chamber.

Claims 20-23, 25-27 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobin in view of Hutcheson.

Tobin discloses the invention except for the bag is not a T shirt type bag. Hutcheson discloses a T shirt type bag. It would have been obvious to modify the bag to be a T shirt type bag in order to reuse a readily available supply of disposable bags of grocery or T shirt type.

Claims 13, 24 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobin or [Tobin in view of Hutcheson] in view of Sectish.

Tobin and the combination lack advertisement on its backboard. Sectish teaches advertisement. It would have been obvious to add advertisement to any readily visible location including a backboard to promote a product, service or event.

Claims 16, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobin or [Tobin in view of Hutcheson] in view of Kaslow.


Tobin and the combination lack a base panel. Kaslow teaches a base panel. It would have been obvious to add a base panel to provide bottom containment to further support the bags bottom preventing tearing and spillage

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc